

Federal Communications Commission

DA 01-1015

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 APR 20 A 11:20

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(McCall, Idaho and Pinesdale, Montana)

MM Docket No. 01-93
RM-10076

NOTICE OF PROPOSED RULE MAKING

Adopted: April 11, 2001

Released: April 20, 2001

Comment Date: June 11, 2001

Reply Date: June 26, 2001

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed on behalf of Idaho Broadcasting Consortium, Inc. ("IBC"), permittee of Channel 294C2, McCall, Idaho, requesting the substitution of Channel 294C1 for Channel 294C2 at McCall and reallocation of Channel 294C1 from McCall to Pinesdale, Montana.¹ IBC requests modification of its construction permit to specify operation on Channel 294C1 at Pinesdale, Montana. IBC indicated that it would file an application for Channel 294C1 at Pinesdale if the channel is allotted to the community.

2. IBC filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

In support of its proposal, IBC contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Pinesdale, Montana, with its first local service while not depriving McCall, Idaho, of its own local service as Stations KDZY-FM and KMCL-FM are licensed to McCall. IBC has proposed a new transmitter site for Channel 294C1 at Pinesdale that is in compliance with the Commission's spacing requirements. According to IBC, Pinesdale is located in

¹ Although IBC is requesting the reallocation of Channel 294C1 from McCall to Pinesdale, IBC has not specifically requested the substitution of Channel 294C1 for Channel 294C2 at McCall. We assume that this is an oversight and request the IBC clarify this in comments as Commission records indicate that IBC was granted a construction permit for Channel 294C2 at McCall on December 8, 1999, which expires 36 months after the grant date (BPH-19971023MD). A search of Commission records did not locate records showing the substitution of Channel 294C1 for Channel 294C2 at McCall.

Ravalli County, was incorporated in 1983 and has a 1990 Census population of 1,052 people. Further, Pinesdale has a Town Meeting form of local government which encourages broad participation. Pinesdale has its own police and fire departments as well as a post office and zip code (59841). In addition, Pinesdale has a water treatment facility, various businesses, a town library and a private school, Pines Academy, serving kindergarten through eighth grade students. IBC contends that reallocating Channel 294C1 to Pinesdale will serve the public interest by providing a first local service to the community of Pinesdale while not depriving the community of McCall of local service.

3. We believe that IBC's proposal warrants consideration since the reallocation of Channel 294C1 could provide the community of Pinesdale with its first local FM service while not depriving McCall of its sole local aural service. A staff engineering analysis indicates, using IBC's proposed site, that the channel can be allotted to Pinesdale in compliance with the Commission's spacing requirements and that city grade coverage will be provided to the community. Although we recognize that Channel 294C1 is an unbuilt facility, since IBC has specified a site for Channel 294C1 at Pinesdale that is different than the site specified in its construction permit for Channel 294C2 at McCall, the proposal will result in areas that will lose reception service as well as those that will gain new reception service. Therefore, IBC is requested to provide information regarding areas and populations that will gain service as well as those that will lose service if Channel 294C1 is reallocated to Pinesdale. IBC should also include the total reception services that are now available within the gain and loss areas.

4. Channel 294C1 can be allotted to Pinesdale, Montana, in compliance with the Commission's minimum distance separation requirements at IBC's specified site.² Since Pinesdale is located within 320 kilometers of the U.S.-Canadian Border, concurrence of the Canadian Government will be requested for this allotment. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 294C1 at Pinesdale.

5. In view of the fact that the proposed allotment could provide a first local FM service to Pinesdale, Montana, without depriving McCall, Idaho, of its sole local service, we believe it would serve the public interest to solicit comments on the proposal to allot Channel 294C1 to Pinesdale, Montana. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to McCall and Pinesdale.

Community	Channel No.	
	Present	Proposed
McCall, Idaho	252C1, 266C1, 294C2	252C1, 266C1
Pinesdale, Montana	-----	294C1

² The coordinates for Channel 294C1 at Pinesdale 46-10-07 and 114-17-06

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before June 11, 2001, and reply comments on or before June 26, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C. 20554.